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APPENDIX I.

[Vide answer to starred question No. 709 asked by Sri N. K. Palanisamy at the meeting of the Legislative Assembly held on 15th February 1955, page 508 supra.]

Extract from the Special Officer's report containing suggestions for the amendment of the Madras Shops and Establishments Act, 1947.

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9. The Government have asked me to report mainly on the question of exemptions and prosecutions. The representations received by me on the other hand mostly deal with respect to other matters. I submit below a gist of the more important representations with my remarks thereon for necessary orders :—

A number of employers have stated that the term "persons employed in any establishment in a position of management" in section 4 (1) has not been defined and one of them has queried whether the head of a section in an office which contains several sections will come under the definition or not. Another has suggested that a salary limit should be fixed for the employees to whom the Act should apply. It has been pointed out that a salesman in a firm of motor car dealers getting a salary of Rs. 1,000 per month and a commission on the sales has claimed to come under the Act. It does not seem to me that the intention of the Act is to interfere with the relations between the higher-paid employees and their employers. I would suggest that the term "Person in a position of management" may be more comprehensively defined and also a salary limit of about Rs. 300 may be fixed in respect of employees.

It has been represented that provision should be made in the Act for the grant of gratuity where an employee is dismissed under section 41. I think there is no justification for giving gratuity where an employee is dismissed for misconduct. There may be a case for providing for a gratuity depending on the length of service, where an employee is ousted on account of retrenchment, or retired on account of old age, in the case of bigger shops and commercial establishments, say those paying more than a certain amount of sales tax.

It has been represented that drivers and transport workers should be brought within the scope of the Act. I recommend this suggestion.

Wages and other emoluments payable under the Act are now recoverable only through a Civil Court. It has been suggested that provision similar to that in the Payment of Wages Act should be made to enable recovery or in the alternative the Payment of Wages Act should be made applicable to shops and establishments. I recommend this suggestion.

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It has been suggested that there should be an appeal from the decision of the Labour Commissioner under section 50. I think there is no harm in providing that where an employee so desires he may take the matter in appeal to an Arbitrator or the Government. Such a right need not, however, be given to employers. So far as they are concerned the decision of the Labour Commissioner should be final.

It has been represented that co-operative institutions should not be exempted from the provisions of the Act. I agree with this suggestion. The profits of the co-operative society go to the shareholders and so long as the society has to employ persons for doing its work there is no reason why the beneficial provisions of the Act should not be made applicable to them. The sympathy normally shown to the co-operative societies as against private merchants should not be allowed to confuse the view to be taken of relations between the society and its own employees.

It has been represented that certain firms in the City purposely altered the existing privileges just before the Act was passed so as to escape the operation of section 50 and it has been suggested that section 50 should be amended so that the privileges which were in force on a date before the provisions of the Act were under discussion in the Legislature, should be fixed—say, a date one year before the commencement of the Act. I recommend this suggestion for consideration.

There are certain business firms in which the period of work both before and after the passing of the Act has been less than the prescribed maximum of eight hours. The question " What is overtime? " arises in the case of these firms. If we suppose that the number of hours of work in a firm is six and a half, is the employee entitled to overtime wages for half an hour when he is asked to work for seven hours; or will he become entitled to overtime wages only when the eight-hour period is exceeded. A ruling given by the Labour Commissioner on this point in favour of the employers seems to have been set aside by the High Court and this decision in turn was set aside by the Supreme Court on the ground that the Labour Commissioner's decision in the matter was final. It is also seen from the letters of different employers that they are following different interpretations. I submit that the position may be made clear and overtime wages may be made payable where work is done in excess of the normal hours of work obtaining in the firm though the total period worked on the day may be less than the period of eight hours fixed under the Act.

The Act does not apply to persons whose work involves travelling. What amounts to travelling has not been defined. Will cycle messengers who carry messages in the City come under the definition or not? I think the Act should be amended making the intention clear and that employees who have to travel within a City should not be exempted from the Act. Though the Act

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does not now apply to caretakers, it has been suggested that watchmen should be brought within the scope of the Act. I recommend that this may be done though different hours of work and periods of work may be specified for them.

It has been pointed out that the provisions of section 41 are not effective enough. The Appellate Authority can decide under section 41 that the dismissal of an employee was improper but he cannot order his reinstatement. It will still me open to the employer not to take back the employee into service and the only remedy for the employee is to go to a Civil Court. No doubt the decision of the Appellate Authority under section 41 will be given due weight in the Court but the procedure becomes complex and costly. It has been suggested that the decision under section 41 should have the force of a decree. I think that though the Act confers certain privileges to the employees it is ultimately only the employer who has to pay the salary of the employee and the Appellate Authority is not going to pay it. In spite of all possible legislation ultimately the employer and employee have to settle things mutually in an amicable manner and it will become a difficult and impossible situation if an unwanted employee is to be forced upon an employer under section 41. I think therefore that the section may be amended giving power to the Appellate Authority to direct that where the employer is not prepared to take back the employee, he should in the alternative make a specified lump sum payment as compensation to the employee. This may be giving some compensation to the employee, while saving the employer the necessity of having to take back an employee whom he does not like for some reason or other. I think it may be more convenient from the point of view of the employers and employees if a local officer, say the Inspector of Factories, is made the Appellate Authority in petty cases—where the employee gets a salary below a certain limit. In the more important cases a second appeal or a reference to the Court preferably the later may be provided.

As the Act stands at present sick leave cannot be accumulated. It has been suggested that casual leave and sick leave should not lapse at the end of the year. I do not think that it is possible to accumulate casual leave but I recommend that the Act may be amended so that the sick leave may be accumulated for a period of two years.

It has been represented that store-rooms, godowns and warehouses attached to commercial establishments which are now outside the scope of the Act should be brought within the Act. I recommend this suggestion. It has been suggested that canvassers should also be brought under the Act. I think that though it may not be possible to fix hours of work in respect of canvassers there seems to be no reason why some of the other provisions of the Act like payament of salary, granting of casual leave, privilege leave, sick leave, etc., should not be extended to them. I recommend that the Act may be amended suitably.

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It has been suggested that there should be provision for tiffin or restrooms in shops where more than 20 employees are working. I recommend this suggestion.

Some important Banks have represented that the conditions of service of Bank employees were recently the subject of arbitration by the All-India Industrial Tribunal (Bank disputes), that this award was set aside in appeal but the matter is under enquiry and another award is going to be passed and that the award will cover all the matters covered by the Madras Shops and Establishments Act, that the previous award was more liberal than the Act and that for all these reasons the Banks should be exempted from the provisions of this Act. The Banks find it inconvenient to comply with two sets of regulations, viz., those contained in the Tribunal's award and those in the Act. They also find the inspections by the Assistant Inspectors of Labour rather irksome. If an award or other decision confers privileges on the employees not less than those contained in the Act, then I submit that there is no need to enforce the Act. All such Banks may be exempted. I would also suggest that in the case of reputed establishments which, of their own accord, have been maintaining their own registers, exemption may be given from maintaining the registers prescribed under the rules in the Act provided that *all* the required information can be obtained from the registers maintained by the establishment.

It has been represented to me that small shops or establishments employing less than four or five persons should be exempted from the operation of the Act. I do not recommend this suggestion. It has been suggested that the Act and the rules revised up to 31st March of every year should be published and that the Labour Commissioner's orders should also be published in the form of a Manual at annual intervals. I recommend this request.

It has been suggested that the casual leave of 12 days is for a permanent employee and that there should be provision to reduce it proportionately in the case of employees who leave after three or four months. I think section 25 (2) may be amended so that the full casual leave of 12 days becomes admissible only in the case of employees who have put in a service of not less than one year. In the case of new entrants who have not completed one year's service, the casual leave admissible may be restricted to two days for every month of service put in by them.

It has been stated that the option to work overtime now rests with the employee and that section 14 (1) must be amended so that an employee may be required to work overtime subject of course to the payment of overtime wages. I think this matter is one to be settled amicably between the employer and the employee and it is unlikely that any employee will normally refuse to work overtime if he is paid the overtime wages. However, the Act may be amended giving the employer the right to demand overtime work up to a specified maximum subject of course to the payment of overtime wages except where the employee has reasonable cause for refusal.

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It has been suggested that some offices are distempered once in three or four years and this is as good as annual white-washing. I recommend that such cases may be taken into account and rule 5 in the Act which prescribes annual white-washing may be suitably modified.

It has been represented that some employees in firms are required to make a security deposit and that a monthly deduction is made in the salary towards the payment of this security deposit. It has been suggested that provision should be made under section 34 for making such deductions. I recommend that where an employee agrees to such reductions they may be made and that section 34 may be amended suitably.

It has been represented that holidays for festivals should be allowed. I recommend this. It should be made compulsory in the case of establishments. In the case of shops, restaurants, cinemas, etc., to which the public resort on festival days it should be made obligatory to give a compensatory holiday to the employee concerned.

10. Some of the Assistant Inspectors of Labour have represented to me the following difficulties :—

The term "any business connected with establishment" occurring in section 2 (2) of the Act has not been defined. There have been cases where a shop was kept open on the day of weekly closures and the shop-keeper on being prosecuted contended that the shop was kept open for receiving goods and not for effecting sales. The Court accepted this plea and acquitted the accused. I recommend that the term "closed" should be defined so as to make the intention clear.

TRUTH ALONE TRIUMPHS

Appendix II.

[Vide answer to starred question No. 716 asked by Sri M. Narayana Kurup at the meeting of the Legislative Assembly held on 15th February 1955, page 515 supra.]

A detailed report on the dysentery epidemic in Agathi and Kavarathy islands.

I disembarked at Agathi island on 4th April 1954, with necessary medical equipments for the treatment of dysentery as per instructions to stay in the island to render medical aid to the dysentery cases till the epidemic subsided and then to proceed to Kavarathy.

2. Dysentery epidemic broke out in Agathi in the third week of January 1954 with its peak during the middle of February and, by the end of March 1954 the epidemic had subsided. The Assistant Surgeon Dr. Bhannunni Nair, who was in charge of Government Dispensary, Kavarathy, reached the island on 24th March 1954 with necessary medicines for treating dysentery cases.